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DECISION



21499
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-203528

DATE: April 13, 1982

MATTER OF: Ray M. Bourgeois - Retroactive salary increase - Advanced step-placement

DIGEST: Attorney-advisor in U.S. Air Force claims retroactive advanced step-placement and accompanying backpay based on detrimental reliance on erroneous salary listed on vacancy announcement. His claim is denied. Although OPM allowed advanced step-placement based on superior qualifications to relieve hardship, retroactive adjustment is not authorized under Back Pay Act, 5 U.S.C. § 5596. Failure by agency to request advanced step-placement is not a violation of a nondiscretionary regulation or policy.

This decision arises from an appeal by Mr. Ray M. Bourgeois of Settlement Certificate Z-2828386, March 27, 1981, issued by our Claims Group, in which his claim for a retroactive adjustment of his step-placement and backpay from May 7 to July 30, 1980, was denied. For the reasons set forth below, we sustain the disallowance of Mr. Bourgeois' claim.

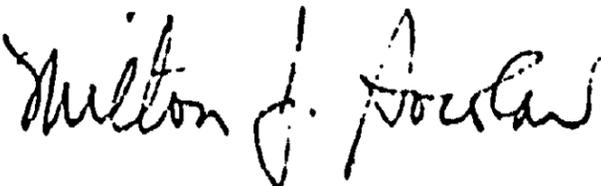
Mr. Bourgeois was appointed to the position of attorney-advisor, GS-11, step 1, with the United States Air Force, Keesler Air Force Base, Mississippi, on May 7, 1980. The attorney-advisor vacancy was announced in January 1980, and, due to a typographical error, the salary was incorrectly shown as \$26,611. An amended announcement listing the correct salary of \$20,611 was subsequently issued. Mr. Bourgeois applied for the position based upon the first announcement listing the annual salary at \$26,611, and states he neither saw the amended announcement nor was advised as to the correct salary. On May 14, 1980, he filed a formal complaint seeking to be paid the salary quoted on the original job announcement.

By letter of May 23, 1980, Mr. Bourgeois' supervisor sought the authority to adjust Mr. Bourgeois' salary. In a letter dated August 5, 1980, the Office of Personnel Management (OPM) authorized his salary and step-placement to be increased from GS-11, step 1, to GS-11, step 9, which

was then \$26,107 per year, effective July 31, 1980. The variation was granted to relieve the hardship caused Mr. Bourgeois in his relocation to Keesler AFB, and was based upon his superior qualifications. Mr. Bourgeois then claimed the difference in pay from May 7 to July 30, 1980, in the amount of \$1,288.32, which is the difference in pay between the first and ninth steps of GS-11 for that period. Our Claims Group disallowed the claim.

An agency does not have authority under 5 U.S.C. § 5333 (1976) and 5 C.F.R. § 531.203(b) (1981) to appoint an employee at a rate above the minimum rate of grade unless it obtains the prior approval of OPM for a "superior qualifications appointment." The failure of an agency to request such approval is neither a violation of a nondiscretionary administrative regulation or policy nor a deprivation of a right granted by statute or regulation, and cannot form the basis for the retroactive grant of a subsequently approved OPM authorization of an advanced step-placement. See Harriet B. Marple, B-188195, January 3, 1978; John P. Corrigan, B-191817, February 5, 1979.

In accordance with the above, there is no basis on which to allow Mr. Bourgeois' claim for a retroactive advanced step-placement and accompanying backpay, and the Certificate of Settlement issued by our Claims Group is sustained.

for 
Comptroller General
of the United States